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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1961

No. 217

LOUISIANA STATE BOARD OF EDUCATION,
NASH ROBERTS, PRESIDENT, ET AL.,
Petitioners,

versus

SAMUEL ALLEN, ET AL.,
Respondents.

LOUISIANA STATE BOARD OF EDUCATION,
ROBERT H. CURRY, PRESIDENT, ET AL.,
Petitioners,

versus

PRISCILLA ANGEL, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

JACK P. F. GREMILLION,
Attorney General,
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LOUISIANA STATE BOARD OF EDUCATION,
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SAMUEL ALLEN, ET AL.,
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LOUISIANA STATE BOARD OF EDUCATION,
ROBERT H. CURRY, PRESIDENT, ET AL.,
Petitioners,

versus

PRISCILLA ANGEL, ET AL.,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT.

Petitioner, Louisiana State Board of Education, prays that a Writ of Certiorari issue to review the judg-

ment of the United States Court of Appeals for the Fifth Circuit entered in the above entitled case on February 9, 1961.

CITATIONS TO OPINIONS BELOW.

The orders and decrees of the United States District Court for the Eastern District of Louisiana, Honorable J. Skelly Wright presiding, rendered and entered on the 28th day of April and 24th day of May, 1960, are unreported but are printed in Appendix "B" hereto, page 19, *et seq.* The opinion and decrees of the United States Court of Appeals for the Fifth Circuit rendered and entered on February 9, 1961, are reported in 287 Fed. (2d) 32, 33, and are printed in Appendix "B" hereto, pages 21, *et seq.* The order of the United States Court of Appeals for the Fifth Circuit denying a rehearing was rendered on April 13, 1961.

JURISDICTION.

The judgment and decree of the Court of Appeals was entered on February 26, 1961. Rehearing was denied on April 13, 1961. The jurisdiction of this Court is invoked pursuant to 28 U. S. C., Section 1254 (1).

QUESTION PRESENTED.

May the United States District Court permit a suit against a State agency, by citizens of the State, or is such a suit prohibited by the Eleventh Amendment to the United States Constitution?

STATUTE INVOLVED.

The Constitution of the State of Louisiana, Article XIX, Section 26, withdrawing consent to suit against the Parish School Board.

STATEMENT OF FACTS.

This petition arises from two somewhat similar cases initially decided by the United States District Court for the Eastern District of Louisiana.

In the first case Priscilla Angel and several others filed a complaint in the United States District Court for the Eastern District of Louisiana on February 24, 1956, against the Louisiana State Board of Education, Robert H. Curry, President of Louisiana State Board of Education, and Shelby M. Jackson, State Superintendent of Education, ex officio Secretary of Louisiana State Board of Education, seeking a temporary injunction to enjoin and restrain the defendants, agents, servants, employees, etc., from denying to plaintiffs and persons of their class the use and enjoyment of all trade schools, lands, buildings, facilities, opportunities in the Southwest Louisiana Trade School, the Natchitoches Trade School, the St. Helena Parish Trade School, the Greensboro Trade School, Sowela Trade School and P. H. Harris Trade School.

The plaintiffs further alleged that they had been denied admission to the trade schools because laws of the State of Louisiana provided that the aforesaid trade schools be maintained as white schools, and as negroes they were not entitled to admission under said laws. (Tr. p. 2019.) The plaintiffs asked that a three-judge court

be convened pursuant to Title 28, Sections 2281 and 2284, which request was denied by the Court. (Tr. p. 21.)

On October 21, 1957, defendants filed an answer and their defenses. (Tr. pp. 22, 23, 24, 25 and 26.)

On November 4, 1959, the plaintiffs filed a motion for summary judgment and defendants opposed it. (Tr. pp. 29, 30 and 31.) Later, on March 14, 1960, the matter was heard, arguments had and all evidence produced by affidavit, and additionally complainants and defendants were given additional time to file additional affidavits. (Tr. p. 47.) Thereupon, on April 28, 1960, the Court granted a motion for summary judgment and on May 24, 1960, issued its order pursuant thereto (Tr. pp. 75 and 80) and petitioners filed a notice of appeal (Tr. p. 77). Designation of the contents of the appeal. (Tr. p. 78.) And the cost bond for appeal. (Tr. pp. 79 and 80.)

On the ninth day of February, 1961, the Court of Appeals affirmed the judgment of the lower Court and subsequently on April 13, 1961, denied petition for rehearing filed by your petitioners herein.

In the second case, Samuel Allen and three other complainants filed a complaint in the United States District Court for the Eastern District of Louisiana on July 29, 1958, against the State Board of Education, Nash Roberts, President of Louisiana State Board of Education, and Shelby M. Jackson, State Superintendent of Education, and ex officio Secretary of the Louisiana State Board of Education, seeking a temporary and permanent injunction enjoining and restraining the defendants and all other persons acting in concert and participation with

them from refusing or failing to admit plaintiffs or members of the class of persons who plaintiffs represent, solely because of race or color, to this trade school. The plaintiffs contended that each of the four of them had made application to the Shreveport Trade School and each and every one of them had been denied admission thereto solely on a basis of race or color. (Tr. pp. 2-10.)

The Louisiana State Board of Education and defendants filed an answer wherein they denied that the Court had jurisdiction over the subject matter or over the defendants herein and further specifically denied that the four plaintiffs named herein had been refused admission to the Shreveport Trade School solely on a basis of race or color. (Tr. pp. 12-15.)

On September 29, 1959, the plaintiffs filed a motion for summary judgment, and the matter was heard by the Court, all evidence being introduced by affidavit. The plaintiffs introduced affidavits of Dorothy Simpkins, Green L. Pearrie, Reverend Lawrence T. Scott, and Reverend Milton Flynn. (Tr. pp. 19, 20, 30, 31, 40 and 41.) All of these affidavits alleged that the plaintiffs had been denied admission to said trade school solely on the basis of race and color.

On the other hand, the Board of Education introduced certain affidavits which not only denied that these students had not been granted admission because of race and color, but affirmedly showed the reason why each one of the students had not been granted admission to said trade school. (Tr. pp. 23, 24, 42, 43, 44 and 45.)

That on April 28, 1960, the Court ordered that the motion for summary judgment be granted (Tr. p. 46),

and on May 24, 1960, issued its order in the proceedings (Tr. p. 47). The defendants on the 26th day of May, 1960, filed a notice of appeal (Tr. p. 48) and filed the necessary bond for costs (Tr. pp. 49, 50 and 51).

That on the ninth day of February, 1961, the Court of Appeals affirmed the judgment of the lower Court and subsequently on April 13, 1961, denied petition for rehearing filed by your petitioners herein.

REASONS FOR GRANTING WRIT.

The salient question directed to the Court here is the application of the Eleventh Amendment. In this case the decisions of the courts below, if allowed to remain unaltered, or if adopted by this Court, would nullify the Eleventh Amendment to the United States Constitution. The result would violate both the spirit and letter of the amendment, as well as conflict with decisions of this Court and courts of appeal of other circuits.

In the matter at bar the petitioner is a State agency, created by State Constitution to perform certain functions, and may not be sued without consent of the Legislature first being obtained. *Louisiana Constitution*, Article 19, Section 26.

The courts below seemed to feel that a suit against a State agency cannot be considered a suit against the State. This conflicts with the preponderance of case law.

There is very little doubt that the jurisprudence of the United States as a whole and of the Federal Courts particularly is so overwhelming that a governmental

agency, unless created with the power to be sued and to sue, cannot be made a party to a suit without the specific permission of its creator.

In 1952 in the District of Columbia a situation somewhat similar to this one arose, and the Court therein realizing that the law was so well settled did not find it necessary to cite authorities since the law was so clear, and only stated:

> "At the outset it should be stated that the Board of Education and the Board of Commissioners, as such, are not entities and that therefore are not subject to suit and a motion should be granted as to them on the ground without further consideration." *Miller, et al., v. Board of Education, District of Columbia, et al.*, 106 Fed. Supp. 988, 989 (D. C., D. C., 1952).

See also:

Parker v. Board of Education of Sumter County, 70 S. E. (2d) 369 (Georgia);
Smith v. Hefner, 68 S. E. (2d) 783 (N. C.);
Stepan v. Louisiana State Board of Education, 78 So. (2d) 18, 21.

The decision in this case stems directly from a decision of the Fourth Circuit in the case of *Charlottesville v. Allen*, 240 Fed. (2d) 59 (1956). In that case for the first time, without support in jurisprudence, law or statute, a Court first enunciated the doctrine that a State agency could be sued without the consent of the State. This concept born in 1956 in the Fourth Circuit has been nurtured in the Fifth Circuit, oddly enough, only in cases involving "segregation."

When such a radical concept suddenly comes into being, it is only natural that one should go back and examine the keen analysis and irreputable logic which went into the writing of the opinion.

This earth-shaking departure from years of jurisprudence is contained all in one paragraph of the opinion located on page 63 thereof, which reads as follows:

> "It is argued that the **doctrine thus laid down must be confined to individuals and may not be applied to corporate agencies of state, such as school boards. We see no grounds for such distinction.** If high officials of the state and of the Federal Government (see Philadelphia Company v. Stimson, supra) may be restrained and enjoined from unconstitutional action, we see no reason why a school board should be exempt from such a suit merely because it has been given corporate powers. A state can act only through its agents; and whether the agent be an individual officer or corporate agency, it ceases to represent the state when it attempts to use state power in violation of the Constitution and may be enjoined from such unconstitutional action. While no such question was raised in the cases heard by the Supreme Court in Brown v. Board of Education, 347 U. S. 483, 74 Sup. Ct. 686, 98 Law Ed. 873 and 349 U. S. 294, 75 Sup. Ct. 753, 99 Law Ed. 1083, the question was inherent in the record in those cases; and it is not unreasonable to suppose that the Supreme Court would have directed injunctive relief against school boards acting as state agencies, if no such relief could be granted because of the

provisions of the Eleventh Amendment of the Constitution." (Emphasis supplied.)

The first premise, that the Court saw no ground for distinction between a corporate agency of the State and the individual, was in direct contradiction with all the jurisprudence decided on the matter up until that date.

Aerated Products Co. of Philadelphia, Pa., v. Department of Health of New Jersey, et al., 159 F. (2d) 851 (C. A. 3, 1947):

"The Eleventh Amendment o of the Federal Constitution denied to Federal Co courts the jurisdiction over suits against a State b by citizens of another State. The Department is a a part of the executive branch of the New Jersey g government. Revised Statutes of New Jersey gover ernment. Revised Statutes of New Jersey of 193 937, 26:2-2-1, et seq., N. J. S. A.; Board of Health h v. Mundet Cork Corporation, 1939, 126 N. J. Eq. q. 100, 8 A. (2d) 105, affirmed 1940, 107 N. J. Eq. q. 61, 11 A. (2d) 260. **Consequently, we agree with h the court below that plaintiff's suit against the Dep epartment is prohibited by the Eleventh Amendment.** t. Ford Co. v. Department of Treasury, 1945, 323 3 U. S. 459, 65 S. Ct. 347, 89 L. Ed. 389.

"As to Mahaffey, the rule is s equally clear that **his function as a public official b brings him within the protection of the Eleventh Am Amendment only if the statutes authorizing his actio ions are constitutional, and if his actions do not e exceed the authority granted him.** Baldwin v. G. G. A. F. Seelig, 1935, 294 U. S. 511, 55 S. Ct. 4 497, 79 L. Ed. 1032,

101 A. L. R. 55. If the activities of Mahaffey are in violation of a right guaranteed by the federal Constitution, this court has jurisdiction to enjoin such." (Emphasis supplied.)

United States Department of Agriculture, et al., v. Hunder, et al., 171 F. (2d) 793 (C. A. 5, 1949):

"While cases may be found in which a department or bureau of the government has been suffered to assert rights, the Department of Agriculture is not truly a juridical person being neither an individual nor a corporation. **It is an agency of the Government, not empowered to sue, or to be sued in evasion of sovereign immunity.** See United States Dept. of Agriculture v. Remund, 330 U. S. 539, 541, 67 S. Ct. 891, 91 L. Ed. 1082. The Secretary, however, is a person. If he by affirmative act exceeds his lawful authority or threatens to do so, to the injury of established rights, he may be enjoined, for in such circumstances he is not truly representing the Government." (Emphasis supplied.)

New Haven Public Schools v. General Services Administration, 214 F. (2d) 592 (C. A. 7, 1954):

"It is admitted that the two defendants dismissed by the District Court are agencies of the executive branch of the United States Government. In other words, they are administrative departments of the Government. **It has long been established that such agencies are not truly juridical persons but are strictly representatives of the government, who may not be sued in evasion of sovereign immunity.** United States Dept. of Agriculture v. Remund,

330 U. S. 539, 541, 67 S. Ct. 891, 91 L. Ed. 1082; Herrin v. Farm Security Administration, 8 Cir., 153 F. (2d) 76; Thomason v. Works Progress Administration, 8 Cir., 153 F. (2d) 342; North Dakota-Montana Wheat Growers' Assn. v. United States, 8 Cir., 66 F. (2d) 573, 92 A. L. R. 1484, certiorari denied 291 U. S. 672, 54 S. Ct. 457, 78 L. Ed. 1061.

"Plaintiff seeks to escape the effect of this rule for the reason, as it argues, that the suit is controlled by decisions in actions rightfully brought against individual governmental officers. It is fatal, we think, to this contention that no officers were named as parties or served with process. Indeed, such officers are subject to suit only in the District of Columbia. Blackmar v. Guerre, 342 U. S. 512, 72 S. Ct. 410, 96 L. Ed. 534. The District Court properly held that it did not have and could not entertain jurisdiction over the agencies." (Emphasis supplied.)

Evidently, the Fourth Circuit believed that the Department of Health of New Jersey could be sued directly despite the language used by the Third Circuit; that the United States Department of Agriculture could be sued despite the language of the Fifth Circuit, and that the General Services Administration could be sued despite the language used by the Seventh Circuit. But even above and beyond this, it is difficult to see how the Fourth Circuit ignored and avoided the doctrine of nonsuability of an agency of government enunciated by this Court in the case of *Blackmar v. Guerre*, 342 U. S. 512, 72 U. S. Supreme Court 410 (1952):

> **"Since the Civil Service Commission is not a corporate entity which Congress has authorized to be sued, a suit involving the action of the Commission generally must be brought against the individual Commissioners as members of the United States Civil Service Commission.** No such suit was brought here, and no service was had upon the individuals comprising the Civil Service Commission. Therefore, neither the individuals comprising the Civil Service Commission nor the Commission as a suable entity was before the District Court." (Emphasis supplied.)

Again it would appear that the Court ignored the permissible limits recently established by this Court when it stated unequivocally that it would only allow a suit against an individual in order to enjoin unconstitutional action.

> "Passing to the jurisdictional ground upon which District Court rested its decision, we note that the State of Georgia was not named as a party in the District Court. But since the appellee is a state officer, the Court below probably considered whether the relief sought against the officer is not, in substance, sought against the sovereign. If this action is in effect, an unconsented suit against the State, the action is barred.
>
> "The District Court characterize appellant's action as one to enforce an alleged contract with the State of Georgia, and, as such, suit against the State but appellant's complaint is not framed as a suit for specific performance. It seeks to enjoin

> appellee from collecting taxes in violation of appellant's right under the Federal Constitution. **This Court has long held that a suit to restrain unconstitutional action threatened by an individual who is a state officer is not a suit against the state.** These decisions were re-examined and re-affirmed in ex parte Young, 1908, 209 U. S. 123, 28 Sup. Ct. 441, 52 Law Ed. 714, and have been consistently followed to the present date. This general rule **has been applied in suits against individuals** threatening to enforce allegedly unconstitutional taxation, including cases where, as here, it is alleged that the taxation would impair the obligation of contracts. Georgia Railroad and Banking Company v. Redwine, 72 Sup. Ct. 321, 324, 342 U. S. 299." (Emphasis ours.)

It is earnestly and hopefully urged that this doctrine annunciated by the Supreme Court in these cases will incur the same universal application as does the *Brown* decision.

The next premise upon which the Court based its decision is equally as untenable as the prior one. It stated that since the jurisdictional question was not raised in the *Brown* case, it was inherent in the record and it would not be reasonable to suppose the Supreme Court would have allowed the injunctive relief against the state agency if the relief could not be granted. It seems to be rather weak to say that there definitely is jurisdiction in a case since the Supreme Court failed to note that there was no jurisdiction, and this is even more so true, since, if the record were carefully read,

it would be noted that in the *Brown* case the Kansas statutes had specifically given to the School Board the power to sue and be sued, and, for that reason, the question of jurisdiction, and or suit against the state was never raised and hence never decided.

Petitioners cannot conceive of a bolder or more unrestrained violation of the Eleventh Amendment than the one occurring herein. If this rule of jurisprudence is allowed to stand the Eleventh Amendment will in effect be read out of the Constitution.

CONCLUSION.

For the reason stated above, petitioner herein feels that it is incumbent upon this Court to preserve, fully and completely, the positive prohibition contained in the Eleventh Amendment by reversing the decision of Courts below.

Respectfully submitted,

JACK P. F. GREMILLION,
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Baton Rouge, Louisiana;
CARROLL BUCK,
First Asst. Attorney General;
GEORGE M. PONDER,
Asst. Attorney General;
WILLIAM P. SCHULER,
Asst. Attorney General,
Attorneys for Petitioners.

PROOF OF SERVICE.

I, WILLIAM P. SCHULER, one of the attorneys for petitioner, and a member of the Bar of the Supreme Court of the United States, hereby certify that on this day I served copies of the foregoing Petition for Writ of Certiorari on A. P. Tureaud, Esquire, counsel for respondents, by mailing a copy thereof, postage prepaid, addressed to his office, 1821 Orleans Avenue, New Orleans, Louisiana.

Dated this . day of June, 1961.

WILLIAM P. SCHULER,
Assistant Attorney General.
State of Louisiana

APPENDIX "A"

CONSTITUTION, STATE OF LOUISIANA, 1921. ARTICLE XIX, SECTION 26.

Section 26. The following named commissions, boards, bodies or municipal corporations are and shall be considered special agencies of the State of Louisiana:

(1) The State Parks Commission of Louisiana,

(2) The Recreation and Park Commission for the whole Parish of East Baton Rouge,

(3) All recreation districts created under terms of Article XIV, Section 14 (d-4) of this Constitution;

(4) Any municipal corporation, parish or subdivision of the State in matters respecting the operation or maintenance of parks and other recreational facilities or in connection with any rule or regulation applicable thereto,

(5) The State Board of Education,

(6) The Board of Supervisors of Louisiana State University & Agricultural & Mechanical College,

(7) The parish school boards of each of the parishes of the State of Louisiana,

(8) The school boards of the municipalities of Monroe in Ouachita Parish and Lake Charles in Calcasieu Parish, and Bogalusa in Washington Parish,

(9) The State Superintendent of Public Education in his capacity as such as well as in the capacity of ex-officio secretary of the State Board of Education, and

(10) The State Department of Education.

The consent of the State of Louisiana to suits or legal proceedings against any of the above listed special agencies, (however heretofore given) is hereby expressly withdrawn and no such suit or proceeding shall be permitted except as provided in this section. This withdrawal of consent to suits and legal proceedings shall apply not only to suits and legal proceedings filed in the future but also to any pending suits or legal procedure. There is expressly excepted from the foregoing, suits for the enforcement of contracts entered into by any of the special agencies or for the recovery of damages for the breach thereof. Additionally, the Legislature of Louisiana may, in individual cases, by appropriate act grant to any party showing just and reasonable cause the right to sue any of these special agencies, in compliance with Section 35 of Article III of this Constitution.

This Section shall be self-operative and shall supersede any other portion of this Constitution or any statutes or regulations in conflict herewith. (Act 613 of 1956, adopted November 6, 1956).

APPENDIX "B"

SUMMARY JUDGMENT

(Number and Title Omitted)

Filed: 5/24/60

This cause came on for hearing on the 29th day of April, 1960, upon the plaintiff's Motion for Summary Judgment and the Court being of the opinion that a summary judgment should be granted, it is now Ordered:

That the defendants, and each of them, their agents, employees, successors in office and all persons in active concert and participation with them, be, and they hereby are, enjoined from continuing to enforce a policy, practice, custom and usage of excluding plaintiffs and other qualified Negro students from the following trade schools, solely because of their race and color: Southwest Louisiana Trades School at Crowley, Arcadia Parish, La., the Natchitoches Trade School at Natchitoches, Natchitoches Parish, La., St. Helena Parish Trade School at Greenberg, St. Helena Parish, La., Sowela Vocational-Technical School at Lake Charles, Calcasieu Parish, La., and the T. H. Harris Trade School at Opelousas, St. Landry Parish, La.

This 24th day of May, 1960.

(Signed) J. SKELLY WRIGHT
United States District Judge

ORDER GRANTING MOTION OF PLAINTIFFS FOR SUMMARY JUDGMENT

Minute Entry 4 28 60 Wright, J.

(Number and Title Omitted)

This cause came on at a former day, for hearing on the motion of plaintiffs for summary judgment herein, and was argued by counsel for the respective parties and submitted, when the Court took time to consider.

Now, after due consideration thereof:

IT IS ORDERED by the Court that the motion of plaintiffs, for summary judgment herein, be, and the same is hereby, GRANTED.

(Signed) J. S. W.

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18521

LOUISIANA STATE BOARD OF EDUCATION, ROBERT H. CURRY, EX-PRESIDENT, ET AL.,
Appellants,

versus

PRISCILLA ANGEL, ET AL.,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(February 9, 1961.)

Before TUTTLE, Chief Judge, JONES, Circuit Judge, and MIZE, District Judge.

PER CURIAM: The judgment from which this appeal was taken was entered in a suit in which the appellant Board was enjoined from excluding the appellees and other Negroes from trade schools operated by the Board because of color and race. The sole question presented by the appeal is whether the Board, as an agency of the State, can be sued without its consent. The question was correctly answered by the district court in permitting the action to be maintained. See *Louisiana State*

Board of Education v. Allen, F. 2d , decided this day, and cases there cited. The judgment of the district court is

AFFIRMED.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By CLARA R. JAMES
Deputy
New Orleans, Louisiana

JUDGMENT

Extract from the Minutes of February 9, 1961

LOUISIANA STATE BOARD OF EDUCATION, ROBERT H. CURRY, EX-PRESIDENT, ET AL,

No. 18521. versus

PRISCILLA ANGEL, ET AL.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Louisiana State Board of Education, Robert H. Curry, Ex-President, and others, and the surety on the cost bond on appeal, Maryland Casualty Company, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Minute Entry April 28. 1960 Wright, J.

(Number and Title Omitted)

This cause came on at a former date, to be heard on the motion of plaintiffs for summary judgment herein, and was argued by counsel for the respective parties and submitted, when the Court took time to consider.

Now, after due consideration thereof;

IT IS ORDERED by the Court that the motion of plaintiffs, for summary judgment herein, be, and the same is hereby, GRANTED.

(Signed) J. S. W.

SUMMARY JUDGMENT

(Number and Title Omitted)

Filed: May 24, 1960

This cause came on for hearing on the 29th day of April, 1960, upon the plaintiffs' Motion for Summary Judgment and the Court being of the opinion that a summary judgment should be granted, it is now Ordered:

That the defendants, and each of them, their agents, employees, successors in office and all persons in active concert and participation with them, be, and they hereby are, enjoined from continuing to enforce a policy, practice, custom and usage of excluding plaintiffs and other qualified Negro students from the Shreveport Trade School located in the City of Shreveport, La., solely because of their race and color.

This 24th day of May, 1960.

(Signed) J. SKELLY WRIGHT
United States District Judge

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18522

LOUISIANA STATE BOARD OF EDUCATION,
NASH ROBERTS, PRESIDENT, ET AL,
Appellants,

versus

SAMUEL ALLEN, ET AL,
Appellees.

Appeal from the United States District Court for the Eastern District of Louisiana.

(February 9, 1961.)

Before TUTTLE, Chief Judge, JONES, Circuit Judge, and MIZE, District Judge.

PER CURIAM: The appellant, the Louisiana State Board of Education, is a body corporate under the laws of Louisiana.[1] It was originally provided that as corporate body, the Board might sue and be sued. We are informed that this authorization has been withdrawn. The appellees, Negroes, brought a class suit alleging that

[1] LSA-R. S. 17:2.

the appellant Board refused to admit them as students in the Shreveport Trades School because of their race and color. The appellees moved for Summary Judgment. In the Introduction to the "Learn by Doing" bulletin of the School it was stated that it was created and established "for the education of the white people of the State of Louisiana." Among the courses listed were those for the training of barbers and sheet metal workers.

Two of the Negroes applied for training to become barbers, two sought to take courses to become dental assistants, and one desired to be trained as a sheet metal worker. Affidavits showed that all were told, when they applied for admission, that the School was for white students only. In contesting the motion for summary judgment the Board submitted affidavits reciting that the applicants for barber training had not obtained approval of the Louisiana State Board of Barber Examiners, that there were no openings in the Shreveport area for colored sheet metal workers, and that it had been decided to discontinue the course of training for dental assistants. By other affidavits filed for the appellees it was shown that Board approval was not required of white applicants for barber training and that applications for training were, at the time the colored applicants were rejected, being accepted from white applicants for training as dental assistants. The district court granted the motion for summary judgment. This appeal is from that judgment.

The appellants contend that there were issues of fact to be tried and hence the granting of a summary judgment was error. We find no merit in this contention.

The appellants make the further contention that the Louisiana State Board of Education is an agency of the State and that, as such, it cannot be sued without the consent of the State. Prior decisions have resolved this question against the contention made by the appellants. *Orleans Parish School Board v. Bush*, 5th Cir., 1957, 242 F. 2d 156, cert. den. 354 U. S. 921, 77 S. Ct. 1380, 1 L. Ed. 2d 1436; Board of Supervisors of Louisiana State University, 5th Cir. 1959, 265 F. 2d 736. See also *Evans v. Louisiana State Board of Education*, 85 So. 2d 669.

We find no error in the entry of the district court's judgment. It is

AFFIRMED.

A true copy

Test: EDWARD W. WADSWORTH
Clerk, U. S. Court of Appeals, Fifth Circuit
By CLARA R. JAMES
Deputy

New Orleans, Louisiana
June 20, 1961

JUDGMENT.

Extract from the Minutes of February 9, 1961

LOUISIANA STATE BOARD OF EDUCATION, NASH ROBERTS, PRESIDENT, ET AL.

No. 18522. versus

SAMUEL ALLEN, ET AL.

This cause came on to be heard on the transcript of the record from the United States District Court for the Eastern District of Louisiana, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed;

It is further ordered and adjudged that the appellants, Louisiana State Board of Education, Nash Roberts, President, and others, and the surety on the cost bond on appeal, Maryland Casualty Company, be condemned in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.